

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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| PEDRO GOMEZ, Plaintiff, v. MERLE SOGGE, et al., Defendants. |) No. C 08-2969 MMC (PR))) ORDER GRANTING MOTION TO FILE) AMENDED COMPLAINT; DIRECTING CLERK) TO ISSUE SUMMONS AND UNITED STATES) MARSHAL TO SERVE AMENDED) COMPLAINT; DENYING DEFENDANT) SOGGE'S MOTION TO DISMISS; REFERRING) CASE TO MAGISTRATE JUDGE VADAS FOR) SETTLEMENT PROCEEDINGS |
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(Docket Nos. 16 & 28)

On June 16, 2008, plaintiff, a California prisoner incarcerated at Pelican Bay State Prison ("PBSP") and proceeding pro se, filed the above-titled civil rights action under 42 U.S.C. § 1983, claiming deliberate indifference to his serious medical needs. By order filed January 6, 2009, the Court found plaintiff had stated cognizable claims for relief and ordered the complaint served on seventeen defendants. Additionally, the Court found the instant matter suitable for mediation proceedings pursuant to the Northern District's Pro Se Prisoner Mediation Program, directed defendants to file an answer, and advised the parties the Court thereafter would refer the action for mediation.

On May 14, 2009, plaintiff filed a motion seeking leave to file an amended complaint. The motion is hereby GRANTED. See Fed. R. Civ. P. 15(a). The Clerk of the Court shall file the proposed amended complaint submitted with plaintiff's motion. (Docket No. 28.)

With the exception of one defendant, all of the defendants named in the initial complaint have now filed an answer. On March 31, 2009, defendant Dr. Merle Sogge ("Sogge") filed, in lieu of an answer, a motion to dismiss the complaint for lack of jurisdiction, on the ground plaintiff had alleged only a supplemental state law claim for

1 negligence against him and that such claim is separable from plaintiff's Eighth Amendment
2 claims. The motion will be denied as moot. The amended complaint, which supplants the
3 earlier complaint, includes allegations that said defendant knowingly failed to provide
4 plaintiff with adequate medical care in violation of the Eighth Amendment.

5 By his amended complaint, plaintiff also has named, and linked to his allegations of
6 deliberate indifference, two defendants not named in the original complaint. The Clerk of the
7 Court shall issue summons and the United States Marshal shall serve, without prepayment of
8 fees, a copy of the amended complaint, all attachments thereto, and a copy of this order upon
9 the following defendants at Pelican Bay State Prison: PBSP Medical Technical Assistant
10 Nelson and PBSP Licensed Vocational Nurse Medhane Yordanos. Upon the filing of
11 answers by Nelson and Yordanos, or their making an appearance herein, said defendants
12 shall participate in the mediation proceedings discussed below.


13 In accordance with the Court's order of service, this matter is hereby REFERRED to
14 Magistrate Judge Nandor J. Vadas for mediation proceedings. The proceedings shall take
15 place within ninety days of the date this order is filed, or as soon thereafter as Magistrate
16 Judge Vadas's calendar will permit. Magistrate Judge Vadas shall coordinate a place, time
17 and date for one or more mediation conferences with all interested parties and/or their
18 representatives and, within fifteen days of the conclusion of all mediation proceedings, file
19 with the Court a report thereon.

20 The Clerk is directed to serve a copy of the court file, including a copy of this order,
21 on Magistrate Judge Vadas.

22 This order terminates Docket Nos. 16 and 28.

23 IT IS SO ORDERED.

24 DATED: May 22, 2009

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26 MAKINE M. CHESNEY
27 United States District Judge
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